

## Department of Transportation

1246.790-1

will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause must contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receive credit for any pay-

ments where equipment failure is covered by warranty provisions.

### **1246.790 Use of warranties in major systems acquisitions by the USCG. (USCG)**

This subpart sets forth the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

#### **1246.790-1 Policy. (USCG)**

The USCG shall include a warranty in all contracts for major systems acquisitions. When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at (TAR) 48 CFR 1246.706 have been considered. The warranty shall also meet the following requirements:

(a) For systems or components which are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and (FAR) 48 CFR 46.710(b)(2).

(b) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(c) The warranty provided under paragraph (b) of this section shall provide that in the event the major system or any component thereof fails to meet the terms of the warranty provided, the contracting officer may:

(1) Require the contractor to promptly take such corrective action as the contracting officer determines to be necessary at no additional cost to the Government, including repairing or replacing all parts necessary to achieve the requirements set forth in the contract;

(2) Require the contractor to pay costs reasonably incurred by the United States in taking necessary corrective action; or

(3) Equitably reduce the contract price.

(d) Any warranty shall specifically exclude coverage of combat damage.

**1246.790-2 Tailoring warranty terms and conditions. (USCG)**

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and (FAR) 48 CFR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

**1246.790-3 Warranties on Government-furnished property. (USCG)**

A contractor for a major systems acquisition shall not be required to provide the warranties specified in (TAR) 48 CFR 1246.790-1 on any property furnished to that contractor by the Government except for:

- (a) Defects in installation; and
- (b) Installation or modification in such a manner that invalidates a warranty provided by the manufacturer of the property.

**1246.791 Cost benefit analysis. (USCG)**

Warranties shall be obtained for a major systems acquisition only when it is cost beneficial in accordance with TAM (Copies of the Transportation Acquisition Manual may be obtained from

the Government Printing Office) 1246.703. If a specific warranty is considered not to be cost beneficial by the contracting officer, a waiver request shall be initiated in accordance with USCG guidance at 48 CFR 1246.792.

**1246.792 Waiver and notification procedures. (USCG)**

(a) The Secretary of Transportation, without delegation, may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination prior to granting the waiver. The request for Secretarial waiver shall include, at a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the Office of Acquisition and Grant Management (M-60). The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

**PART 1247—TRANSPORTATION****Subpart 1247.1—General**

1247.104-370 Contract clause.

## Department of Transportation

1247.506

### Subpart 1247.3—Transportation in Supply Contracts

1247.305 Solicitation provisions, contract clauses, and transportation factors.  
1247.305-70 Solicitation provisions.  
1247.305-71 Contract clause.

### Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

1247.506 Procedures.

AUTHORITY: 5 U.S.C. 301; 41 U.S.C. 418(b); 48 CFR 3.1.

SOURCE: 59 FR 40287, Aug. 8, 1994, unless otherwise noted.

### Subpart 1247.1—General

#### 1247.104-370 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247-70, Acceptable Service at Reduced Rates, to implement the requirements of (FAR) 48 CFR 47.104-3.

[59 FR 40287, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

EFFECTIVE DATE NOTE: At 61 FR 50250, Sept. 25, 1996, section 1247.104-370 was amended by changing the reference "1252.247-1" to "1252.247-70", effective Oct. 25, 1996.

### Subpart 1247.3—Transportation in Supply Contracts

#### 1247.305 Solicitation provisions, contract clauses, and transportation factors.

#### 1247.305-70 Solicitation provisions.

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (TAR) 48 CFR 1252.247-71, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(b);

(b) (TAR) 48 CFR 1252.247-72, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(e);

(c) (TAR) 48 CFR 1252.247-73, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-4(b);

(d) (TAR) 48 CFR 1252.247-74, Shipments to Ports and Air Terminals, with Alternates I, II, and III, shall be inserted in accordance with (FAR) 48 CFR 47.305-6(a)(1) through (a)(4);

(e) (TAR) 48 CFR 1252.247-75, F.o.b. Designated Air Carrier's Terminal, Point of Exportation, implements the requirements of (FAR) 48 CFR 47.305-6(a)(5); and

(f) (TAR) 48 CFR 1252.247-76, Nomination of Additional Ports, implements the requirements of (FAR) 48 CFR 47.305-6(d).

[59 FR 40287, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

EFFECTIVE DATE NOTE: At 61 FR 50250, Sept. 25, 1996, section 1247.305-70 (a), (b), (c), (d), (e), and (f) was amended by revising the references to section numbers "1252.247-2," "1252.247-3," "1252.247-4," "1252.247-5," "1252.247-6," and "1252.247-7," to read "1252.247-71," "1252.247-72," "1252-247-73," "1252-247-74," "1252-247-75," and "1252.247-76," respectively, effective Oct. 25, 1996.

#### 1247.305-71 Contract clause.

The contracting officer shall insert the clause at (TAR) 48 CFR 1252.247-77, Supply Movement in the Defense Transportation System, in contracts to implement the requirements of (FAR) 48 CFR 47.305-6(f)(1).

[59 FR 40287, Aug. 8, 1994, as amended at 61 FR 50250, Sept. 25, 1996]

EFFECTIVE DATE NOTE: At 61 FR 50250, Sept. 25, 1996, section 1247.305-71 was amended by changing the reference "1252.247-8" to "1252.247-77", effective Oct. 25, 1996.

### Subpart 1247.5—Ocean Transportation by U.S.-Flag Vessels

#### 1247.506 Procedures.

(d) Reports concerning cargo preference shipments/ocean shipments (see (FAR) 48 CFR 47.506(d)) shall, as a minimum, contain the information and follow the procedures within subparagraph (c) of (FAR) 48 CFR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

## PART 1252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### Subpart 1252.1—Instructions for Using Provisions and Clauses

1252.101 Using part 1252.